DOCUMENT RESUME

ED 077 109 EA 005 020

AUTHOR	Escott, Richard H.
TITLE	Teacher Tenure -- Time for Change.
PUB DATE	26 Feb 73
NOTE	7p.; Paper presented at American Association of School Administrators Annual Convention (105th, Atlantic City, New Jersey, February 24-28, 1973)
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Due Process; Speeches; *Teacher Dismissal; *Teacher Employment; *Teacher Welfare; *Tenure

ABSTRACT

In this speech, the author identifies and discusses some misconceptions about tenure, discusses some problems encountered in dismissing tenured teachers, and offers solutions for improving this dismissal process. To improve the dismissal process, the author urges that (1) boards of education consult an attorney when contemplating a tenure decision; (2) the membership of tenure commissions include lawyers; and (3) tenure commissions be given authority to appoint hearing officers to serve local boards of education. (JF)

ED 077109

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS
105th Annual Convention
Atlantic City, N.J. February 24-28, 1973

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
OFFICE OF EDUCATION
THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL OFFICE OF EDUCATION POSITION OR POLICY

SPEAKER: Dr. Richard H. Escott, Superintendent, Rochester Community Schools

TOPIC: TEACHER TENURE--TIME FOR CHANGE

PLACE: Wedgwood Room, Marlborough-Blenheim Hotel

TIME: Monday, February 26, 2:30 P.M.

PROGRAM: Page 53 FOR RELEASE UPON DELIVERY

(Note: Replaces Original Text #4)

A famous cartoon character named Pogo says: "We have met the enemy and they is us."

I'm wondering if Pogo knew anything about teacher tenure...because we is the enemy---not teachers or teacher tenure.

Why? Let's take a look into the past: Massachusetts enacted the first tenure law in 1886. Massachusetts: that bastion of early education--now referred to with a somewhat different pronounciation by tenure opponents. That was back when buffalo still roamed the plains.

My state---Michigan--- didn't enact tenure legislation until the buffalo was long gone. 1937.

Now we're approaching the mid-point of the 1970's...and we're still buffaloed. In fact, most of us are trying to hide from the problem--no pun intended.

Well, what is the problem? Why are we so disturbed about tenure that we are trying to get rid of it? Why are things so complex that many are trying to hide?

Let me make it clear right at the beginning that I favor retention of tenure...after some basic changes. I think tenure is conceptually fine...although it is functionally poor.

Tenure is a problem to us because we don't understand it. Worse yet, there is little help for those of you who want to understand it. There are few tenure publications, the subject is virtually ignored in our colleges of education, and only a handful of districts have had tenure dismissal experience.

So that's problem one: little information available and only a few limited sources from which to obtain more.

EA 005 020

FILMED FROM BEST AVAILABLE COPY

And that's one of the reasons we're against tenure...we don't understand it so we want to get rid of it. But this is myopic.

Teachers are equally as adamant on the other side. They are saying that tenure is needed to protect them from arbitrary and capricious decisions by local boards of education. You see...they don't understand tenure either. Tenure isn't needed to protect teachers from the whims of school boards. Current labor laws and virtually all negotiated contracts do that.

You and I don't have the fortitude to tell a teacher he's through because the board president's daughter needs a job. Teacher tenure wouldn't be our problem...the problem would be the local education association, the NEA, the NAACP, the American Civil Liberties Union, the press, and the Department of Defense.

Problem one--lack of knowledge-- has generated something we might call problem 1A-- tenure misconceptions.

The public believes that tenure is a haven for mediocrity. Lay people think tenure makes it impossible for a school district to dismiss an unsatisfactory teacher. This is a misconception.

Unfortunately, the Tenure Commission has fed this fire. Here's an example: during the first 32 years of Michigan tenure legislation, the Tenure Commission rendered only 53 decisions. Last year the Commission decided 22 cases.

We have thousands of teachers in Michigan. If we judge by the number of Tenure Commission cases. we are led to believe that only 22 of Michigan's teachers were considered unsatisfactory last year.

Other misconceptions have spread through the nation's teaching associations. Here again there is good reason: On one occasion the Chicago Public Schools dismissed 63 teachers who had performance ratings of satisfactory. The teachers were released without a hearing.

In 1924, the NEA conducted a study which indicated an alarming teacher turn-over rate. This study indicated that the major reasons for teacher dismissal were: 1) "Political" reasons; 2) non-residence of a teacher; 3) to make positions available for friends and relatives of board members and influential citizens; 4) to break down resistance to school policies; and 5) to reduce budgetary expenditures. These things can't happen with today's labor laws and teacher contracts. Teachers who believe they can are naive.

Misconceptions like these have led to extremely negative public attitudes toward tenure. In 1970, 53% of the people in a national Gallup poll indicated disapproval of tenure. Last year 61% of the people wanted tenure eliminated.

Now, we have to recognize that there is more to the public's disapproval of tenure than the "old time" examples I've cited. Maybe we should take a look at what happens when we single out a teacher because he is doing an unsatisfactory job.

We'll agree, first of all, that acting on such a person at a board of education meeting is an unpleasant task. Right away we admit to our constituents that there's a bad apple on the staff. The public reacts by thinking: "Hey, that's pretty bad...and just think of all the other bad apples that must be in the barrell!"

For a period of time, we can expect the entire school district to be on trial. Yet, there are those who will give us credit for singling out a problem and doing something about it. They say: "Well, at least they're making efforts to shake things up."

It's usually about this point in time that you lose your case before the tenure commission...and that's problem two: Although we are winning more, we lose too many cases because we have an inherent inability to follow specific procedures. That's one of the main reasons we lose most of our cases before the tenure commission: we don't document our case and precisely follow the very specific timetable contained in most tenure acts.

In Michigan, the tenure law specifically states that a teacher must be given at least sixty days notice of his dismissal. That doesn't mean 40 or 50 or even 59½--it means <u>at least 60</u>.

Now that doesn't seem too complicated, does it? Yet two months ago a Michigan school district had a tenure case dismissed by the commission because the teacher had only received 59½ days notice. The merits of that case may never be heard...and the teacher will probably be back in the barrel--giving the school district a black eye and decaying the professionalism that most teaching staffs possess.

Let's take a look at some of the investments the board of education had made prior to this disappointing climax:

First, there were evaluations by the building principal and other administrators. Obviously, discussions of this teacher's competency were thoroughly considered by school officials...to say nothing of the discussions at the board level.

Secondly, an attorney was brought in to handle the case. It would be naive to think that his services were offered without compensation.

Thirdly, there had to be an effect of staff morale. Dismissing an employee is usually not taken lightly by other members of the staff (and rightly so).

Finally, confidence in public education probably suffered a bit. It's not easy to admit to the public that you have made a mistake...yet that is precisely what you are doing when you expose a case involving teacher competency.

If you're as community relations conscious as you should be, think, also of the parent who has a child in that teacher's classroom. What kind of hopes can he have for his child...and what does he think about the "quality education" we're always talking about?

Of course, these are only basic investments. All required time, energy, and money...and in this case all were expended for zero gain.

Apparently inadequate teachers are in the nation's classrooms today because boards of education have failed to follow the procedures clearly outlined in the Tenure Law. But, you say, these procedures are complex. No, we say, they are not. The text of the Michigan Tenure Act fills four pages--four little pages.

Why then do boards have such a poor track record in tenure cases? The answer is easy: boards of education lose many of the cases they bring to the Commission simply because they have failed to precisely follow the timetable in the Act. Most cases dismissed by the Commission are decided on the basis of procedure. The law says you must give a teacher 60 days notice if his services are to be terminated. Sixty... not fifty-nine and one-half!

At this point you're looking at one another and asking why I favor retention of tenure. Remember that I said tenure was conceptually fine. It is. It does help protect the teacher from unjust dismissal by an administrator or board of education. There is another reason why tenure is needed: it provides employers an orderly method of dismissing a teacher--a method which protects a school district and administrator from future incrimination.

Let me speak specifically about Michigan tenure law. Contrary to what many people believe, it is <u>not</u> impossible to dismiss an unsatisfactory teacher. The tenure law is very specific, and, if followed to the letter, it can do the job for which it was intended.

I feel, however, that there are some basic flaws in the law which need immediate attention. Changes need to be made--changes that will benefit everyone: the administrator, the board of education, the teacher, the parent, and, most importantly, the child in the classroom.

Let's label the law itself as PROBLEM THREE. The Minnesota Supreme Court stated that the purpose of the teacher tenure act was to do away with chaotic conditions in respect to termination of teacher contracts.

The Director of School Law and Legislation in Michigan says that the "broad purpose of teacher tenure is to protect worthy teachers from enforced capitulation to political beliefs and to guarantee a job for them after a 3-year period of satisfactory performance, regardless of the preferences, political or otherwise educationally non-related, of those who are responsible for the administration of school affairs."

You know that administrators can be arbitrary. Perhaps you heard of the superintendent who fired the teacher who prayed for a raise because he didn't like anyone going over his head. That's the kind of thing that tenure is designed to prevent, and toward that end it has been very effective.

Our problem is that following the tenure law requires an exacting administrative performance--every deadline met and every incident documented. This is crucial because in effect, the administration and board of education will be on trial too.

The companion problem directly associated with the law is cost--cost to the board of education and the teacher.

I can relate some Michigan examples which should make the point: During the years 1969 to 1972, legal fees alone cost school districts over $2,000 for each of 58 cases reported. Teachers were paid an average of $4,800 in salaries while cases were being litigated (and this does not include the cost of hiring substitute teachers). Nor the cost of administrative time.

One school district in Michigan has had two decisions by the tenure commission and two court decisions during the past five years. The district has escrowed over $40,000 to pay the teacher's salary in case she ends up winning. Thousands of dollars have also been expended for administrative time and legal fees. The Time lag between dismissal by the local board and decision of the tenure commission also contributes to cost. A teacher was dismissed by one Michigan board of education in 1947. In 1953 the Tenure Commission ordered the board to re-hire him and pay back salary for the six-year period.

Let's evaluate some of these problems and discuss some solutions:

PROBLEM A:

The dismissal procedure outlined in the Tenure Act is an integral part of that law. However, boards frequently begin action against a teacher without legal know-how or counsel.

Any bumbling at the local level usually meets with further confusion at the Tenure Commission. Why? Because that body does not have any legal expertise either! Although the Commission is charged with interpretation of a legal document, it can be composed entirely of people without legal training. The five-member Commission is appointed by the Governor according to statute. Two members must be tenured classroom teachers, one must be a superintendent, and one must be a board of education member. The fifth member must be a person falling into none of the preceding classifications.

SOLUTION A:

Obviously, the first step any board of education should take when it contemplates tenure proceedings is consultation with an attorney.

In terms of the Tenure Act, we are recommending a change which would make it mandatory for the fifth Commission member to be an attorney.

RATIONALE A:

Historically, most tenure decisions by boards of education are appealed to the Commission and/or the court system. Why? Improper legal documentation at the local level and failure to follow the timetable of the Act are the two basic reasons. What this means is that decisions are generally based on procedure or legal technicalities rather than the merits of the case.

PROBLEM B:

As I've said, the cost of due process in a tenure decision can, in itself, inhibit action by a board of education. Initial costs are high enough. Consider also that the case gets progressively more expensive as it winds through the appeal process. The Commission may also order a hearing de novo (i.e., the Tenure Commission can hold a new trial with new evidence and then substitute its judgement for that of the local board. In effect this is a completely new trial...with completely new expenses).

SOLUTION B

We recommend that the Act be amended to increase Commission membership to seven. The two new members would be lawyers appointed by the Governor of Michigan, one upon recommendation of the teachers' association and the other on the recommendation of the state school board and administrators associations.

Both attorneys would be full-time members of the Commission, and have specific responsibilities, including: conducting hearings at the local level; writing commission opinions (whether they be majority, dissenting, or unanimous); insuring that both the teacher and the board act legally when presenting a case before the Commission; and, evaluating the legality of all procedures by each party through all levels (beginning at the local board of education). The salaries and costs relating to this service would be absorbed by the State of Michigan.

RATIONALE B:

This change in Commission structure should result in more cases being decided on merit. Cases decided on legal technicalities should be reduced to a minimum, and those based on procedure should be eliminated. Such a change should also reduce the frequency of hearings de novo... that is entirely new hearings.

PROBLEM C:

The third relates to proper procedure and cost. Trials before the Tenure Commission are exactly that--trials. What happens at the local board level must, in essence, be repeated before the Commission. When one considers salaries, preparation, and legal expenses, these "re-runs" do little more than add to the cost of a Tenure case.

SOLUTION C:

The Tenure Commission should be given authority to appoint hearing officers to serve local boards of education. Their independent observations could be sent to the Commission and serve as evidence in any appeal.

RATIONALE C:

Together with the official transcript of local proceedings and the two attorneys (see solution two), the hearings officers would present

testimony to the Commission. Decisions of the Commission could be based on four inputs--the transcript, the two attorneys, and the hearing officer. Each party would receive equal representation and protection... and more cases would be decided on merit. In addition to these three basic problems dealing with the function of the law, there seems to be little evidence of graduate opportunities for school administrators and teachers to study and better understand the tenure act. With an old law on the books that is being used with more and more regularity, graduate schools in educational administration should offer a course in the understanding of teacher tenure. I would also encourage school board associations and administrator associations to conduct statewide workshops. These workshops could involve administrative and school board teams...thus enabling them to become better informed about tenure and the tenure process.

These areas of specific change will benefit all parties--teachers, administrators, board members, and children. Amendment of the Tenure Act will enhance protection for everyone while reducing costs. Those of us who propose millage and bond issues yearly know that the confrontation between teachers and tax-payers can be major issue. All superintendents are aware that teacher competency is being questioned on every front--elementary, junior high, senior high, and college. This will result in a greater demand for teacher competency, and, if the teacher is not competent, there will be pressure for teacher dismissal. The orderly due process in these events obviously has to be tenure. We will need some form of protection for the teacher and the administrator, and that is why now is the time that the tenure acts in this nation should be reviewed and updated. It is now that local boards of education and local school administrators must become more sensitized to what the legitimate tenure issues are. It is now that school board members and school administrators must become more knowledgeable about how the teacher tenure act works in their state. To delay much longer will bring more trouble. Without tenure law, without a realistic tenure act, we may be wedding teachers to school systems for life from the first day of their employment.

Let's not fight to eliminate an existing law that few people use and fewer still understand. Let's change the existing law, understand it, and use it thereby providing services to our staffs, and our boards, and, most importantly, our kids.

---000---